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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

DAVID GENE BRADSHAW,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the reasonableness of a law-enforcement officer's inventory search is affected by the presence or absence of the owner of, or the person being legally possessed of, the vehicle being impounded and searched?

2. Whether an inventory search predicated upon a police department's procedural policy which fails to recognize and enforce its citizens Constitutional rights is unreasonable and in violation of our Fourth and Fourteenth Amendment rights?

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The petitioner David Gene Bradshaw respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit entered in this proceeding on July 15, 1983.

OPINIONS BELOW

The opinion of the Court of Appeals, not

yet reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on July 15, 1983, and this petition for certiorari was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment of the Constitution of the United States, Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"

STATEMENT OF THE CASE

This is a civil forfeiture claim filed by the United States in which an answer was filed by David Gene Bradshaw bringing to issue the allegations of the government's petition. At the pre-trial hearing, it was decided by the Court that because of the facts and circumstances involved, criminal rules of evidence would be used. Upon the presentation of the government's case, the petitioner moved to suppress the evidence obtained as a result of the actions of a police officer who came upon the scene after the initial stopping and within two minutes began searching through the closed luggage contained in the truck in which Mr. Bradshaw was riding. The trial court overruled the motion to suppress and no further evidence was presented. With the evidence before the trial court, including the evidence obtained

as a result of what the witnesses labled an, "Inventory Search," and what is contended by the petitioner as a trespass and invasion of privacy, the trial court ruled in favor of the United States.

A timely appeal was pursued stressing close scrutinization of the factual situation but most importantly bringing forth the critical questions pertaining to the right of privacy as guaranteed by the Fourth and Fourteenth Amendment of the Constitution. The central theme of that appeal and for this petition is that because the inventory search is an administrative task, there are many situations in which they may be avoided if a proper procedural policy was in effect. Understanding that it is the intention of the Supreme Court to hold to a minimum the number of warrantless searches, this theme concludes that if a law enforcement agency has a procedural policy which is not designed to avoid the warrantless inventory searches as much as possible, it is an unreasonable policy and any search resulting

therefrom is unreasonable. The petitioner contends that in order for a procedural policy pertaining to inventory searches be reasonable, the policy must demand the arresting officer make the following statements and questions and record the responses of the owner of, or the person legally possessed of, the vehicle being impounded, to wit:

> That because of the cirmumstances, the officer is forced to impound his vehicle.
>
> That because of the impoundment, there arises the possibility of theft or loss of articles contained in the vehicle.
>
> That he has the right to privacy as guaranteed by the Fourth and Fourteenth Amendment of the United States Constitution.
>
> That he may have the vehicle inventoried to protect his property.
>
> That he may maintain his right to privacy but in order to do so, he must waive any and all liability to the police for such loss or theft.
>
> That if he has any item of concern that he wants protected, he may state so and where it is to be found, and the officer will retrieve said article and protect it until it is returned to him.
>
> That if he signs a release of liability and fails to list any item he wants protected, he will have to forever hold his own.

> That the police have the right to inventory the vehicle only to protect themselves from civil liability that may arise because of the loss or theft of his property.
>
> That if he fails to sign such and acknowledgement and if he further fails to release said liability, the officer will have no other alternative but to conduct a full inventory search of the vehicle.

The Tenth Circuit Court of Appeals affirmed the decision of the District Court for the Northern District of Oklahoma relying upon their prior decision pertaining to inventory searches, United States vs. Martin, 566 F.2nd 1143, 1145 (10th Cir. 1977). The Court simply states that the search did not violate Mr. Bradshaw's Fourth and Fourteenth Amendment rights because it was done in accordance with the local police procedure. The Court never addressed whether the procedural policy of the Tulsa Police Department was reasonable. They ignored the main question raised by the Appellant.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE TENTH CIRCUIT COURT OF APPEALS CONFLICTS WITH THE DECISIONS OF OTHER

COURTS OF APPEALS AS TO THE PROPER INTERPRETATION OF SOUTH DAKOTA vs. OPPERMAN 428 U.S. 364 (1975).

It is the position of the Tenth Circuit Court of Appeals whereupon all they require as necessary for an inventory search to be reasonable, is a procedural policy. Whether the policy is reasonable or unreasonable seems to be of no concern. Their refusal to accept or even discuss the contentions of the petitioner leaves this critical question still unanswered. In contrast, the Eighth Circuit Court of Appeals in United States vs. Wilson 636 F. 2d 1161 (1980), recognized and addressed this very contention. In their decision, they state:

> "We recognize that this conclusion is at odds with that reached by the Tenth Circuit in United States vs. Martin, 566 F. 2d 1143, 1145 (10th Cir. 1977), which held that Opperman established the reasonableness of routine inventory searches of locked automobile trunks. We believe, however, that the facts of Opperman in light of its holding, do not mandate such a result." (at 1164)

The Court further states:

> "In Opperman, the Court noted that the car's owner 'was not present to make other arrangements for the safekeeping of his belongings' and that the 'inventory itself was promted by the presence in plain view of a number of valuables inside the car. Here by contrast, the police offered no special justification for the search and Wilson was present during the search and capable of making other arrangements to safeguard his property. The police could have protected their interests as well as Wilson's without intruding into the privacy of the automobile trunk. The police, for example, could have asked for Wilson's consent to search the car, or, in the alternative, requested that Wilson arrange to remove the car himself or to relieve the police from liability for claims." (citations omitted) (emphasis added) (at 1165)

These contrasting decisions raise significant and recurring problems concerning how to decide the reasonableness of inventory searches. While the courts are trying to make rules as to what is reasonable or unreasonable, their decisions are for the wrong reasons and as long as these decisions are made this way, there will always be indecision and conflicting opinions. This situation attacks the very struc-

ture of the Constitution and its purpose to preserve individual rights. It is clear that it is the individual that suffers, not the law enforcement agencies which disregard more and more an individual's rights and they will continue in the same direction as long as the courts will let them by way of indecision. By taking the position of the petitioner, a more simple and less complicated approach based upon the TRUTH of the situation can be made. The Supreme Court should set the guidelines for which law enforcement agencies should act in these situations thus creating continuity among the decisions of the lower courts and once again demand and obtain the respect of these rights by law enforcement officers.

2. TO ALLOW LAW-ENFORCEMENT AGENCIES TO MAKE THEIR OWN PROCEDURAL POLICY PERTAINING TO INVENTORY SEARCHES IN EFFECT ALLOWS THESE AGENCIES TO LEGISLATE THEIR OWN LAWS AS TO WHEN AND HOW THESE SEARCHES ARE TO BE CONDUCTED.

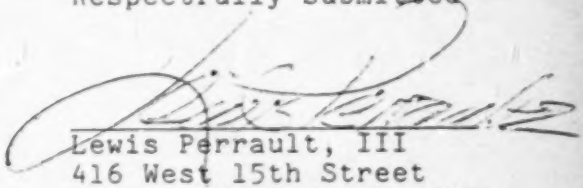
Once the Opperman decision stated that inventory searches were reasonable as long as it was done according to standard police procedure,

it seems that the Tulsa Police Department and other law enforcement agencies, I suspect, took the decision in word only without ever understanding or ignoring the intent of the Supreme Court. They put into affect a policy which allows the factual situation as in this case to happen. An attitude of, 'Go ahead and search; Do not worry about the legalities until later; I have everything to gain and nothing to lose;' has been created. It has come about because law enforcement agencies are making the rules and laws concerning individual rights and they make them designed for their advantage and not the individual. I do not like their attitude but I can understand it. It just makes their job easier and they are not going to get rid of this attitude until properly told to do so by way of the Judicial System. It is up to the Judicial System to put to a stop this severe attack upon the intent and purpose of the Constitution of the United States but the assault continues because of decisions made for all the wrong reasons.

CONCLUSION

The decisions below are appropriate for review by this Court for the reasons stated herein and Petitioner prays that a writ of certiorari be issued to review the order and judgment of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted



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October 13, 1983

APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	
VS.	)	No. 82-1839
	)	(D.C. No. 81-C-691-B)
TWENTY THOUSAND, FIVE HUNDRED AND NINETY DOLLARS, Defendant-Appellant.	)	(Northern D.C. Oklahoma)

ORDER AND JUDGMENT

Before SETH, Chief Judge, BARRETT and McKAY, Circuit Judges.

This is a civil forfeiture action, brought in rem against $20,590.00 in currency, pursuant to the federal drug law forfeiture provisions, 21 U.S.C.A. §881 (a) (6). The trial court found that the currency was forfeited to the United States Government in that the Government demonstrated probable cause that the currency was furnished or intended to be furnished, or was used or intended to be used, to facilitate a violation of the laws of the United States relating to controlled substances.

Claimant David Bradshaw was the passenger in a vehicle owned either by him or his father when the vehicle was pulled off the road by two Tulsa police officers. The vehicle's license tags had been expired for over eight months. Under Oklahoma law it was the duty of police officers to tow and impound such a vehicle.

Bradshaw was searching for the vehicle's registration in the glove box when one of the officers saw a Browning 9mm semi-automatic pistol in the open glove box. The officer drew his weapon and removed Bradshaw from the immediate area of the glove box to the police car. During this inventory the officers discovered $20,590 in United States currency (the subject of this forfeiture action) and approximately 6 pounds of cocaine, in an unlocked flight bag and an unlocked briefcase, respectively.

Bradshaw contends that the entire search was in violation of his Fourth Amendment rights and that therefore the money should be returned to him. This argument is without merit. It

is uncontroverted that the vehicle was subject to being towed because it displayed license tags that were expired in excess of thirty days. Okla. Stat. 47, §22.20. "Inventory searches of automobiles, which are being impounded under local municipal ordinance, have generally been upheld as being reasonable and not in violation of the Fourth or Fourteenth Amendments. South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d (1976)." United States v. Martin, 566 F.2d. 1143, 1145 (10th Cir. 1977). The opening of closed containers in the passenger area of the vehicle was not unreasonable to protect the police against subsequent disputes over allegedly lost or stolen property. See Martin, supra at p. 1145. We hold that the inventory search of the vehicle in accordance with local police procedure pursuant to an ordinance authorizing the towing of the vehicle did not violate Bradshaw's Fourth and Fourteenth Amendment rights.

Bradshaw does not contend that the Government failed to meet its burden of proof on

the forfeiture claim. The challenge posited is directed exclusively to the search.

WE AFFIRM.

Howard K. Phillips
HOWARD K. PHILLIPS, Clerk.